XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(17)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CR.A. NO. 129 OF 2005

S.B. HON'BLE SHRI JUSTICE DHIRENDRA MISHRA

APPELLANT	:	Tangar S/o Shri Bharthari R/o Serangdag P/S Kusmi, Distt. Sarguja C.G.
RESPONDENT	1.	State of Chhattisgarh Through P/S Sarguja, Distt. Sarguja, C.G.

25.10.2007

Shri Ashok Dixit, counsel for the appellant.
Shri Sandip Yadav, Dy GA for the State.

This criminal appeal is directed against the judgment of conviction and order of sentence dated 31st January 2005 passed in S.T.No. 380/03 whereby learned III Additional Sessions Judge (FTC), Ambikapur has convicted the appellant under Section 307, 324 of the Indian Penal Code and sentenced him to undergo RI for 10 years & pay a fine of Rs.1000/-, in default of payment of fine to undergo additional SI for 6 months and to undergo RI for 1 year & pay a fine of Rs.500/-, in default of payment of fine to undergo additional SI for 3 months respectively. Both the sentences have been directed to run concurrently.

2. Case of the prosecution, in brief, is that on 16.3.2003 at about 7.00 a.m. when the complainant Jagwantinbai was

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

breast feeding her child Ashish in the courtyard, the accused came and enquired about his wife and children and when the complainant denied the allegation that she has concealed them, the accused assaulted her with axe, as a result of which she sustained injuries over her head. The accused also assaulted her child Ashish, who sustained injuries below his right eye. Matiram (PW-3) intervened. The incident was also witnessed by Lundaribai (PW-6) and Shantibai (PW-7). The complainant reported the matter in Police Station Kusumi on the same day at about 12.15 noon vide Ex.P/1. During investigation weapon of offence axe was seized from the appellant vide Ex.P/3. The complainant and her son Ashish were sent for medical examination to Community Health Center, Kusumi. Injury report of the complainant is Ex.P/5 whereas injury report of Ashish is Ex.P/7. Dr. T.Sai (PW-5) after examining the weapon of offence seized from the appellant opined that the injuries present over the person of the complainant and Ashish could be caused by the axe. His opinion is Ex.P/8 and P/9.

3. After completing investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur. During trial the prosecution examined seven witnesses. Thereafter, statement of the accused was recorded in which he

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denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication.

4. However, learned trial Court after hearing counsel for the respective parties convicted and sentenced the accused/appellant as mentioned in paragraph 1 of this judgment.

5. Learned counsel for the appellant submits that the injuries present over the person of complainant Jagwantinbai were not sufficient in the ordinary course of nature to cause her death as the complainant personally came to police station and lodged the report. There is no evidence that she remained in hospital and only one injury sustained by her has been described grievous in nature by the doctor and there is no bony injury present over her person. Similarly, the injury sustained by Ashish was also simple in nature. He further submits that there was no motive with the appellant for causing the above injuries and in fact, the incident occurred on the spur of moment without any premeditation.

6. On the other hand, learned counsel appearing for the State/respondent supported impugned judgment of the trial Court.

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7. I have heard learned counsel for the parties and perused the material available on record including the impugned judgment.

8. Dr. T.Sai (PW-5) has examined Jagwantinbai on 16.3.2003 and noticed bone deep incised wound on the right temporal region of size 8 x 2 cm, cutting of temporal veins, swelling just 4 cm below injury No. 1 of size 6 x 4 cm and opined that injury No. 1 was caused by hard and sharp edged weapon and injury No. 2 was caused by blunt weapon and both the injuries were grievous in nature. He has also examined Ashish on 16.3.2003 and noticed incised wound on the lateral side of the right eye of size 3 x 1 cm and opined that the said injury was caused by hard and sharp edged weapon. Thus, from the evidence of the doctor considering the nature of injuries sustained by the complainant over vital part of her body head and the weapon of offence used for causing the above injury, intention of the accused to cause death of the complainant has rightly been inferred by the learned trial Court.

9. Conviction of the appellant is based on the statements of victim Jagwantinbai as also the eyewitnesses namely Matiram (PW-3) and Lundaribai (PW-6).

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10. PW-2 Jagwantinbai has stated that on the date of incident at about 7.00 a.m. when she was sitting in her home with her child, the accused came there armed with an axe and alleged that she has hidden his wife and assaulted her with axe, as a result of which she sustained injuries on the backside of her head and blood started oozing. He also assaulted her child Ashish with axe over his right eye and at that time Mati was present in her home. Thereafter, the accused fled from there with axe. After the incident she lodged the report of Ex.P/1. She has denied the suggestion that because of old animosity she is falsely implicating the accused or that she sustained the injuries as she had fallen over stone. The defence has not been able to impeach the credibility of this witness in her cross-examination.

11. PW-3 Matiram has also stated that at the time of incident he was sitting in the house of Jagwantinbai, who was breast feeding her son, when the accused came there and assaulted her with axe. The accused also assaulted her son. He has categorically stated that the accused gave two blows of axe over head of the complainant and thereafter assaulted her son once. Similar is the statement of Lundaribai (PW-6) who has also seen the appellant assaulting Jagwantinbai and her son Ashish. Defence has not been able to elicit anything in the cross-examination of these witnesses, which makes their

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statements untrustworthy or unreliable. However, PW-7 Shantibai, who was also a witness to the incident, has not supported the prosecution case and has turned hostile.

12. The trial Court relying upon the statements of the victim and two eyewitnesses Matiram and Lundari has held that the appellant was responsible for causing injuries to the complainant and her son. Further placing reliance on the evidence of Dr. Sai it has been held that the injuries present over head of the complainant were grievous in nature, the same were caused by the axe seized from the accused and thus, intention of the appellant to cause death of the complainant has been inferred. In the considered opinion of this Court conviction of the appellant under Section 307 of the IPC is based on the evidence available on record.

13. Learned counsel for the appellant submits that the appellant has been sentenced to undergo RI for 10 years, which is excessive and he is in jail since 17.3.2003 and as such, has already completed more than 4 years 7 months' jail sentence and in these circumstances, the jail sentence imposed upon him should be reduced suitably.

14. Taking into consideration the circumstances in which the offence is committed by the appellant and also considering the fact that no motive has been attributed to the appellant for

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	commission of the offence, while maintaining conviction under Section 307 of the IPC ends of justice would be served if the jail sentence of 10 years RI under Section 307 of IPC is reduced to 7 years RI. Accordingly, the appeal is partly allowed. Conviction of the appellant under Section 307 and 324 of IPC is maintained. Jail sentence of 10 years' RI under Section 307 of IPC is reduced to 7 years' RI. However, fine sentence imposed upon the appellant by the trial Court shall remain as it is. Sd/- Dhirendra Mishra Judge	

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